Supreme Court, U. S.
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In the Supreme Court of the United States

October Term, 1976
No. 76-1220

WILLIAM E. MARTZ,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
BUREAU OF TRAFFIC SAFETY,
Appellee

On Appeal From the Supreme Court of Pennsylvania.

MOTION PURSUANT TO RULE 16 TO AFFIRM ORDER OF THE SUPREME COURT OF PENNSYLVANIA OR IN THE ALTERNATIVE TO DISMISS APPEAL TO THIS COURT AND BRIEF FILED IN SUPPORT THEREOF

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Pennsylvania Motor Vehicle Code, Act of April 29, 1959, P.L. 58, as amended:

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No.

William E. Martz,

Appellant

v.

Commonwealth of Pennsylvania, Department of Transportation, Bureau of Traffic Safety,

Appellee

MOTION PURSUANT TO RULE 16 TO AFFIRM ORDER OF THE SUPREME COURT OF PENNSYLVANIA OR IN THE ALTERNATIVE TO DISMISS APPEAL TO THIS COURT

The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Traffic Safety, by its undersigned counsel, respectfully represents:

1. That the appeal to this Honorable Court does not present a substantial federal question.

2. That it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

3. That the argument in support of substantiality of the questions raised is based in part on a Transportation

Department study which was not introduced below and is not a part of the record of this appeal.

WHEREFORE, The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Traffic Safety, Appellee herein, respectfully requests that the Per Curiam Order of Supreme Court of Pennsylvania dated November 3, 1976, denying Appellant's Petition for Allowance of Appeal from the Commonwealth Court of Pennsylvania be affirmed or in the alternative that Appellant's Appeal to this Honorable Court be dismissed.

Respectfully submitted,
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IN THE SUPREME COURT OF THE UNITED STATES

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No.

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Appellee

BRIEF IN SUPPORT OF MOTION PURSUANT TO RULE 16

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1. History of the Case

On January 21, 1974, Appellant William E. Martz was convicted in the Court of Common Pleas of Northumberland County, Pennsylvania, of violating Section 1037 of the Pennsylvania Motor Vehicle Code, Act of April 29, 1959, P.L. 58, *as amended*, 75 P.S. 1037, driving while under the influence of intoxicating beverages.

On January 29, 1974, the Clerk of Courts of Northumberland County certified a record of the conviction to the Appellee Bureau of Traffic Safety as required by Section 1209(b) of the Vehicle Code, *supra*.

On April 23, 1974, the Director of the Bureau of Traffic Safety notified Appellant that as a result of the said conviction his operating privileges in Pennsylvania were being suspended for a period of one year, effective May 28, 1974, pursuant to Section 616(a) (1) of the Vehicle Code, *supra.* The notice in question afforded Appellant the opportunity for a departmental hearing which he requested by signing the notice and returning it to the Bureau on April 30, 1974. On May 9, 1974 the Bureau sent Appellant a notice of restoration of operating privileges pending outcome of the departmental hearing.

Departmental hearings were scheduled on two separate occasions, July 1, 1974 and September 24, 1974, and both times postponed in order to accommodate Attorney Stephen A. Cohen. A hearing was finally convened on October 11, 1974, in Harrisburg, Pennsylvania, and attended by Appellant, Attorney Cohen and a departmental hearing examiner.

On December 26, 1974, Appellant was again notified that his operating privileges were being revoked for a period of one year, effective January 30, 1975, pursuant to Section 616(a) (1) of the Vehicle Code, *supra.*

On January 20, 1975, Appellant by Attorney Cohen filed an appeal from the revocation in the Court of Common Pleas of Northumberland County and his operating privileges were again restored prior to the effective date of the revocation, this time on the basis of an order of supersedeas signed by the Honorable Michael Kivko on January 20, 1975. Hearing on the appeal was held March 24, 1975 and the Court by Judge Kivko entered an order dated April 22, 1975 dismissing the appeal and reinstating the order of revocation.

Appellant then appealed the order of Judge Kivko to the Commonwealth Court of Pennsylvania at No. 674 C.D. 1975. By opinion dated March 15, 1976, the Commonwealth Court by the Honorable James C. Crumlish, Jr. affirmed the order of the lower court.

Appellant then appealed the order of the Commonwealth Court of Pennsylvania to the Supreme Court of Pennsylvania at No. 2689 Allocatur Docket, 1976. By per curiam order dated November 3, 1976, the Supreme Court of Pennsylvania denied both Appellant's petition for allowance of appeal and his petition for supersedeas.

The Department then reinstated the one-year revocation, effective November 16, 1976. This was the fourth time the revocation had been imposed, although it had never actually gone into effect prior to this because of Appellant's various requests for hearings and appeals. Appellant still did not surrender his operator's license to the Department. Eventually the license was lifted personally by a member of the Pennsylvania State Police on January 21, 1977.

On April 26, 1977, Appellant requested the Supreme Court of Pennsylvania to grant him a writ of supersedeas pending disposition of his appeal to the Supreme Court of the United States. At this writing the petition has not been acted upon and his license remains in the Department with credit allowed toward the one-year revocation from January 21, 1977.

2. Argument for Appellee

(a) Appellant's right to procedural due process was not violated by the Department's revocation procedure.

Appellant's operator's license was revoked pursuant to Section 616(a) (1) of the Motor Vehicle Code, 75 P.S. 616(a) (1) which provides in pertinent part:

> "(a) Upon receiving a certified record, from the Clerk of Court, of any proceeding in which a person pleaded guilty, entered a plea of nolo contendere, or was found guilty by a judge or jury, of any of the crimes enumerated in this section, the secretary shall forthwith revoke for a period of one year from the date of revocation, the operating privilege of any such person:
>
> (1) Operating a motor vehicle or tractor while under the influence of intoxicating liquor. . . ."

Appellant has not contested from the start that he was convicted on January 21, 1974 of violating Section 1037 of the Vehicle Code, driving under the influence of intoxicating liquor. A certified record of the conviction, all that is necessary under the statute to sustain the revocation action, was presented at the departmental hearing and later made a part of the record of the appeal commencing at the initial stage in Northumberland County Common Pleas Court. Appellant had numerous opportunities, before the revocation even went into effect, to show that he was not in fact convicted of the offense which would have been his only legitimate defense to the revocation order. He, of course, failed to do so.

Appellant's reliance on *Bell v. Burson,* 402 U.S. 535, 91 S.Ct. 1586, 292 L.Ed. 90 (1971), is totally misplaced. That case held only that the state must afford a licensee an opportunity for a prior hearing on the question in issue (in that case liability for a motor vehicle accident) before the suspension goes into effect. In this case the only issue left to the department by Section 616(a) (1) was whether or not Appellant was in fact convicted of driving under the influence of intoxicating liquor. This Court stated in *Bell, supra:*

> "The alternative methods of compliance are several. Georgia may decide merely to include consideration of the question at the administrative hearing now provided, or it may elect to postpone such a consideration to the de novo judicial proceedings in the Superior Court." 402 U.S. 542-43.

The record of this case shows that the department afforded Appellant a departmental hearing in order to allow him to rebut the evidence of his conviction before the revocation went into effect. It shows further that he was afforded a hearing on the question in the Common Pleas Court while the revocation was stayed by order of Court.

While this Court indicated in *Bell, supra,* that either forum before the department or the courts would have been sufficient to comply with the due process clause, the record of this case actually shows that Appellant was afforded a hearing in both forums. A man who is able through administrative and judicial maneuvering to delay

a revocation initially set for May 28, 1974 until January 21, 1977 should not be allowed to complain of denial of judicial due process.

(b) The statute in question is not an overly broad invasion of the property rights of Appellant.

While Appellant couches his arguments in terms of procedural due process, it is apparent that his real complaint is that the statute in question is void on its face. It is his contention that it violates substantive due process for the state to revoke an operator's license on the basis of the fact that the licensee was convicted of the crime of drunk driving.

Such a holding would be totally unprecedented and would amount to an outright infringement on the police power of the state to regulate use of its highways in order to protect the public from persons who have abused their privilege to operate a motor vehicle.

Appellant's contention that the provision of the Vehicle Code providing for mandatory revocation of licenses of drunk drivers is unconstitutional is so unsubstantial as not to need further argument. Appellant does not cite a single case striking down a mandatory revocation statute on such grounds.

Appellant's only argument in support of his theory that the statutory scheme is irrational is based on a United States Department of Transportation sponsored study, dated May 31, 1976, which he says indicates that convictions for the crime of driving under the influence bear no

meaningful relationship to the problem driver who is responsible for fatal accidents. This study should not be considered by this Court since it was not introduced and made a part of the record below.

Appellee has had no opportunity to review its contents, cross-examine its author or offer testimony to the contrary.

However, even if the study in question was properly before this Court and its contents supported the proposition for which it is cited, it would still not follow that the mandatory revocation statute is unconstitutional. It is submitted that it is within the police power of the state to revoke the licenses of convicted drunk drivers regardless of whether statistics bear out that in doing so it actually promotes highway safety. Such action is sustainable under the police power as strictly punitive in nature.

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3. Conclusion

Appellee respectfully requests that the order of the Supreme Court of Pennsylvania be affirmed or in the alternative that the appeal to this Court be dismissed.

Respectfully submitted,
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